



PUBLIC NOTICE

**Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554**

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Internet: <http://www.fcc.gov>
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DA 04-2522

**Before the
Federal Communications Commission
Washington, D.C. 20554**

PUBLIC NOTICE

Released: August 13, 2004

**FEE DECISIONS OF THE MANAGING
DIRECTOR AVAILABLE TO THE PUBLIC**

The Managing Director is responsible for fee decisions in response to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. A public notice of these fee decisions is published in the FCC record.

The decisions are placed in General Docket 86-285 and are available for public inspection. A copy of the decision is also placed in the appropriate docket, if one exists.

The following Managing Director fee decisions are released for public information:

A-O Broadcasting Corp - Request for a waiver and refund of an application processing fee **Granted** (July 27, 2004) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), on recon., 10 FCC Rcd 12759 (1995)]

ComTech 21, LLC - Request for a waiver and refund of the late payment penalty associated with fiscal year 2003 regulatory fees **Denied** (July 27, 2004) [See 47 C.F.R. §1.1157; see also Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Report and Order, 18 FCC Rcd 15, 985 (2003) (2003 Report and Order); 47 U.S.C. §159]

KDSJ(AM) - Request for a partial refund of the fiscal year 2003 regulatory fees **Denied** (July 27, 2004) [See Assessment and Collection of Regulatory Fees for Fiscal Year 2003, 18 FCC Rcd 15,985 Attachment D]

KYES(TV) - Request for a waiver and refund of an application processing fee **Granted** (July 27, 2004) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), on recon., 10 FCC Rcd 12759 (1995)]

**NOTE: ANY QUESTIONS REGARDING THIS
REPORT SHOULD BE DIRECTED TO THE
REVENUE AND RECEIVABLES
OPERATIONS GROUP AT (202) 418-1995.**

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

JUL 27 2004

OFFICE OF
MANAGING DIRECTOR

Barry D. Wood, Esq.
Paul H. Brown, Esq.
Wood, Maines & Brown
1827 Jefferson Place, N.W.
Washington, D.C. 20036

Re: Request for Refund of Application Fee
A-O Broadcasting Corporation
Fee Control No. 0404168195159003

Dear Counsel:

This is in response to your request (dated May 5, 2004) for a waiver and refund of the application fee filed on behalf of A-O Broadcasting Corporation (A-O Broadcasting). Specifically, you request that the Commission refund the application fee filed on April 15, 2004, "for special temporary authorization to return KTMN to the air pending final Commission action on the station's application for renewal of license and its application for a license to cover its permit for modified facilities."¹ Our records reflect that you paid the \$145.00 application fee at issue here.

The Commission has discretion to waive filing fees upon a showing of good cause and a finding that the public interest will be served thereby.² We construe our waiver authority under section 8 of the Communications Act, 47 U.S.C. §158(d)(2), narrowly and will grant waivers on a case-by-case basis to specific applicants upon a showing of "extraordinary and compelling circumstances."³

¹ On January 3, 2003, the Media Bureau notified A-O by letter that its license for station KTMN expired on November 7, 2002, pursuant to Section 312(g) of the Communications Act of 1934, as amended, 47 U.S.C. § 312(g), because of that station's failure to transmit broadcast signals for a consecutive 12 month period. Letter to Paul H. Brown, Esq., 18 FCC Rcd 35 (Media Bureau 2003) (license forfeited and call sign deleted). By its letter of March 11, 2003, the Media Bureau denied A-O's petition for reconsideration. Letter to Paul H. Brown, Esq., 18 FCC Rcd 3818 (Media Bureau 2003). An application for review of that action is pending.

² See 47 U.S.C. §158(d)(2); 47 C.F.R. §1.1117(a); *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990).

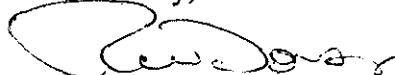
³ See *Establishment Of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 958, para. 70 (1987); *Sirius Satellite Radio, Inc.*, 18 FCC Rcd 12551 (2003).

In support of your request, you assert that "KTMN has never had any revenue" and that "payment of the filing fee would add to the financial hardship A-O is suffering." In a supplement to your May 5 letter (emailed to Commission staff on June 16, 2004), you submit a copy of a financial document entitled "A-O Broadcasting Corporation dba KTMN (A Development Stage Company) Compiled Statements of Operations for the Years Ended March 31, 2004, 2003, 2002, 2001, 1999 and 1998 and the Period from April 1, 1997 (Date of Inception) to March 31, 2004."

In establishing a fee program, the Commission recognized that in certain instances payment of a fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its fees in those instances where a petitioner presents a "compelling case of financial hardship."⁴ In reviewing a showing of financial hardship, the Commission relies upon the relevant entity's cash flow as opposed to the entity's profits, and considers whether it lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus, even if the entity loses money, any funds paid to principals, deductions for depreciation, or similar items are considered funds available to pay the fees.⁵ Our review of the financial documentation that you provide indicates that A-O Broadcasting had no revenue and suffered a financial loss for the year ended March 31, 2004, without regard to depreciation expenses or payments to principals. We therefore find that A-O Broadcasting has shown good cause to warrant a waiver of the application fee and we grant your request for application fee relief.⁶

A check, made payable to the maker of the original check, and drawn in the amount of \$145.00, will be sent to you at the earliest practicable time. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

⁴ See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), on recon., 10 FCC Rcd 12759 (1995) (*Implementation of Section 9 Reconsideration*).

⁵ See *Implementation of Section 9 Reconsideration*, 10 FCC Rcd 12761-62.

⁶ Because we grant your request for refund on the basis of financial hardship, we do not address the additional allegations that you raise in support of your request.

0404168195159003

WOOD, MAINES & BROWN

CHARTERED

ATTORNEYS AT LAW

1827 JEFFERSON PLACE, N.W.

WASHINGTON, D.C. 20036

BARRY D. WOOD
RONALD D. MAINES
PAUL H. BROWN
STUART W. NOLAN, JR.*

May 5, 2004

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TELEPHONE - (202) 293-5333

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E-MAILS: WMB@WMBLAW.ORG

& WMB@LEGALCOMPASS.COM

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2004 MAY 20
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
RECEIVED

*Admitted in Virginia only

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RECEIVED

Attn: Office of Managing Director

MAY - 5 2004

Re: A-O Broadcasting Corporation
KTMN, Cloudcroft, New Mexico
Facility Id No. 89049
Request for Waiver of Application Fee

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Dortch:

On behalf of our client A-O Broadcasting Corporation ("A-O"), licensee of FM broadcast station KTMN, Cloudcroft, New Mexico and pursuant to Section 1.1117 of the Rules, we hereby request a waiver of the processing fee for the request we filed on April 15, 2004 for special temporary authorization to return KTMN to the air pending final Commission action on the station's application for renewal of license and its application for a license to cover its permit for modified facilities.

A-O filed its license renewal application and covering license application on or about July 3, 2003. Even though the staff dismissed these applications, they remain pending in the sense described in Section 1.65 of the Rules until the rehearing and review process is completed. Robert Flotte, the sole owner of A-O, has no ownership interest in any other commercial radio station.

Pursuant to a staff decision inconsistent with the letter and purpose of Section 312(g) of the Communications Act of 1934, as amended, the records of the Media Bureau show KTMN's call letters as having been deleted. A-O has requested review of that decision by the full Commission. Pursuant to Section 307(c)(3) of the Act, is entitled to broadcast pending final Commission action on the issue of its underlying license in terms of Section 312(g), its Form 302 license application, and its license renewal application.

KTMN has never had any revenue. It was on the air during 2001 for too brief a period to justify the sale of advertising. Your office has heretofore granted a waiver of the regulatory fee for FY 2002 for the station. In addition, its operations in 2003 and 2004 have not

Marlene Dortch

May 5, 2004

Page 2

included commercial matter, such that waivers for subsequent fiscal years would also be appropriate.

Section 1.1117 of the Rules allows the Commission to waive, reduce or defer fees where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. Waiver is appropriate for this STA request because among other things, payment of the filing fee would add to the financial hardship A-O is suffering. As indicated above, KTMN is currently operating on a noncommercial basis and has no revenue.

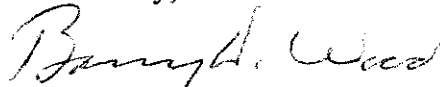
A further basis for a waiver is that Section 307(c) of the Communications Act of 1934, as amended, allows the station to operate even without an STA. Section 307(c) requires neither notification to nor consent of the Commission in order for a license to continue in effect pending completion of administrative action on a renewal application, a Form 302 license application or a disputed determination. In this regard, Section 307(c) is self-effectuating. Thus, it should not be necessary to collect a fee in order to confirm authority for continued operations where KTMN is being operated as a public service to Cloudfroft.

The Commission routinely waives fees where, as here, sound policy favors a waiver. *See Accipiter Communications, Inc.*, 24 CR 919, at ¶ 6 (2001); *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, 16 FCC Rcd 13525, at ¶ 40 (2001); *Mass Media Services Application Fee Filing Guide*, DA 00-1760 (released September 1, 2000); *Daniel R. Goodman*, 10 FCC Rcd 8537 (1995).

Since this office has already paid the filing fee of \$145.00 (see copy of cancelled check enclosed), we are requesting that once the Commission waives the filing fee, a refund be sent to us.

Please call Paul Brown of this firm or the undersigned if you have any questions regarding this matter.

Yours truly,



Barry D. Wood

counsel for

A-O Broadcasting Corporation

k kb

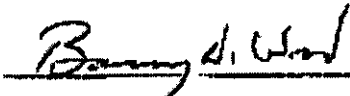
enc.

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SUNTRUST 84-270-888		3
Memo:	Apr 15, 2004	*****\$145.00
	DATE	AMOUNT
One Hundred Forty-Five and 00/100 Dollars		
PAY TO THE ORDER OF	FCC	
		
⑈001548⑈ ⑆055002707⑆1000004894603⑈		⑈0000014500⑈

043000261
001-026 MICRON
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SERIALIZED FILED
APR 15 2004
FBI - WASHINGTON

**RAMIS ACCOUNT RECEIVABLES****Check Number Query Report**

FEE Control Number : 0404168195159003			
Customer FRN	: 0003778412	FRN Name	: Wood, Maines & Brown, Chartered
Check Number	: 154800000000		
Receipt Amount	: \$145.00	Date Received	: 04/15/2004
FEE Control Number : 0404198994296008			
Customer FRN	: 0001689660	FRN Name	: Miller Blueprint Company
Check Number	: 154823000000		
Receipt Amount	: \$50.00	Date Received	: 04/16/2004
FEE Control Number : 0404198994307012			
Customer FRN	: 0002722122	FRN Name	: Waupaca Foundry, Inc.
Check Number	: 154893700000		
Receipt Amount	: \$100.00	Date Received	: 04/19/2004
FEE Control Number : 0404198994307013			
Customer FRN	: 0002722122	FRN Name	: Waupaca Foundry, Inc.
Check Number	: 154884900000		
Receipt Amount	: \$100.00	Date Received	: 04/19/2004